IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

OP.No. 21473 of 2000(F)

PETITIONER:

K.S.MOHANAN,
PRINCIPAL IN FULL ADDITIONAL CHARGE,
GOVERNMENT COLLEGE OF FINE ARTS,
THRISSUR.

BY ADV. SRI.M.CHATHUKUTTY NAMBIAR
SMT.T.RETHI
SRI.K.B.DAYAL

RESPONDENTS:
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1. **THE DIRECTOR OF TECHNICAL EDUCATION, THIRUVANANTHAPURAM.**

2. **THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY, HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

3. **G.NARAYANA PILLAI, PRINCIPAL, GOVERNMENT FINE ARTS COLLEGE, THIRUVANANTHAPURAM.**

4. **K.K.RAJAPPAN, PROFESSOR GRADE – I ON PROMOTION AS PRINCIPAL, FINE ARTS COLLEGE, THIRUVANANTHAPURAM.**

5. **A.S.AJAYAKUMAR, PROFESSOR, FINE ARTS COLLEGE, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT. T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON 23/08/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NOS.36073 & 36181/2000 IN OP.NO.21473/2000F

DISMISSED

23/08/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE BONAFIDE STUDENT CERTIFICATE ISSUED BY DEAN OF FACULTY OF FINE ARTS DTD. 21/03/1990.**

EXT.P2; **COPY OF THE PROMOTION ORDER BY G.O.MS.36/92/H.EDN. DTD. 24/02/1992.**

EXT.P3: **COPY OF THE ORDER BY NO.G.O.(MS)144/98/H.EDN. DTD. 4/12/1998.**

EXT.P4: **COPY OF THE ORDER BY G.O.(RT) 228/78/H.EDN. DTD. 6/2/1978.**

EXT.P5: **COPY OF THE PROCEEDINGS OF FIRST RESPONDENT BY NO.G5-8054/78 DTD. 19/06/1978.**

EXT.P6: **COPY OF THE ORDER G.O.(MS) NO.3/38/H.EDN. DTD.1/1/1988.**

EXT.P7: **COPY OF THE RELEVANT PORTION OF THE SPECIAL RULES BY NO.G.O.(P) 215/88/H.EDN. DTD. 11/10/1988.**

EXT.P8: **COPY OF THE GOVERNMENT ORDER BY G.O.(RT) NO.1039/2000/ H.EDN. DTD. 10/07/2000.**

EXT.P9: **ORDER DTD. 19/10/2002 FROM THE DIRECTOR OF TECHNICAL EDUCATION.**

EXT.P10: **ORDER DTD. 15/07/2004 FROM THE DIRECTOR TO THE SECRETARY.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 21473 of 2000-F

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Dated this the 23rd day of August, 2007.

JUDGMENT

The petitioner challenges Ext.P8 by which respondents 4 and 5 are promoted as Principals and posted accordingly. Both of them at the time of such promotion were working as Professors in the College of Fine Arts, Thiruvananthapuram.

2. The grievance of the petitioner is that though he, according to him, possesses all the qualifications for promotion and posting to the category of Lecturer, Professor and Principal in preference to respondents 3 to 5, he has been denied such opportunity, that too, in spite of the fact that he belongs to a Scheduled Caste.

3. The learned counsel for the petitioner relied on the decisions of the Apex Court in **Union of India v.**

P.C.Misra [1994 Supp (1) SCC 39] and in **Munshi Lal Verma v. Union of India** [1984(3) SLR 498] and the decision of the Punjab and Haryana High Court in **Prem Lal v. State of Punjab** [1982(1) SLR 13].

4. Going by the materials on record, it appears that the Fine Arts Institutions at Thrissur and Mavelikara were upgraded as Fine Arts Colleges only on 4-12-1998 and the petitioner is working as the Superintendent in charge of the Principal of one of those institutions. No statutory rules were framed to govern the service of the Fine Arts Institutions. Resultantly, the Government appointed Sri.Porinchukutty as Principal of the Fine Arts College in Thiruvananthapuram at the time of its upgradation as a Fine Arts College from the status of a Fine Arts School. The special rules were framed on 11-10-1988.

5. The course offered in the Fine Arts College, Thiruvanathapuram is BFA and the course offered in the

Institutions at Mavelikara and Thrissur at that point of time was NDFA.

6. It is also discernible from the counter affidavit that the matter of equalisation/creation or abolition of existing posts in the erstwhile Fine Arts Institutions is still under the active consideration of the Government.

7. The question of equalisation of the different Government institutions in Fine Arts is a matter that has to gain attention of the Government before the equalisation/creation or abolition of posts of the different institutions could be considered. Without treating the different posts in the different institutions as a homogeneous lot, it may not be possible to apply the yardstick available to Fine Arts Colleges to the other institutions, particularly when the upgradation of the institutions is with reference to different dates and the given situations cannot be disturbed unless appropriate

statutory rules are made to govern the institutions by providing equation between the different institutions.

8. Therefore, it may not be appropriate at this point of time to enter on an adjudication as to whether the petitioner ought to have been a preferred candidate over respondents 3 to 5 or even respondents 4 and 5 regarding the appointment to the post of Principal. But that issue cannot be left in the lurch for too long because, the aspiration of the petitioner as an employee in Government service and the entitlements he claims, particularly on the basis of reservation as a member of the Scheduled Caste have to be given immediate and due attention.

9. The impugned order of promotion and posting is an original order of the Government which was amenable to the review jurisdiction of the Government under Rule 35 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Even if such statutory alternate

remedy is not to be told to the petitioner as a ground for relief to him, it is absolutely necessary that the Government considers not only the case of the petitioner but also the question of equalisation/creation or abolition of existing posts in the erstwhile Fine Arts Institutions as stated in paragraph 9 of the undated counter affidavit placed on record on behalf of respondents 1 and 2 on 23-3-2007.

In the aforesaid circumstances, this writ petition is disposed of directing that the promotions and postings made as per Ext.P8 shall remain to be provisional and subject to further orders that the Government may pass after it concludes firstly on the question of equalisation/creation or abolition of existing posts in the erstwhile Fine Arts Institutions and decides on the claim of the petitioner, vis-a-vis, respondents 3 to 5 on the basis of such decision of the Government. The needful in this regard has to be completed in a time-bound manner. Hence, it is directed that the decisions as aforesaid shall

be taken by the Government within an outer limit of six months from the date of receipt of a copy of this judgment and the orders impugned in this writ petition will be treated as provisional and subject to the decisions as aforesaid. It is also necessary on the facts and circumstances of the case that the petitioner and private respondents, as also any other employee entitled to be heard in that regard are extended an opportunity of being heard. It is, therefore, directed that such opportunity shall be extended.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 21473 of 2000-F

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JUDGMENT

Dated: 23rd August, 2007.